

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA MELON RESEARCH PROGRAM

Effective June 26, 1972
Incorporating Amendments Through January 31, 1997

CALIFORNIA MELON RESEARCH PROGRAM

ARTICLE I

DEFINITIONS

Section A. DEFINITION OF TERMS. As used in this Program, the following terms shall have the following meanings:

1. “Act” means the California Marketing Act being Chapter 1 of Part 2 Division 21 of the Agricultural Code, or as the same may be hereafter amended.
2. “Department” means the Department of Agriculture of the State of California.
3. “California Melon Research Program,” “Melon Research Program,” or “Program” means, unless the context otherwise indicates, this marketing order which is issued by the Department pursuant to the provisions of the Act.
4. “Melon Research Board,” “Research Board,” “Melon Board,” and “Board” are synonymous and mean the Melon Research Board created pursuant to Article II of the Program.
5. “Person” means an individual, partnership, firm, corporation, association, subsidiary, affiliate, or other business unit.
6. “Melons” for purposes of this Program, mean the fruits of the species Cucumis melon including cantaloupes, honeydews, honeyballs, casabas, crenshaws, Persians, Santa Claus, and similar varieties thereof, which are produced for commercial purposes within the State of California.
7. “Producer” means any person engaged within this State in the business of producing, or causing to be produced for market, melons in a quantity of 5,000 standard boxes or more or their equivalent delivered to a processor or a handler during a marketing season.
8. “Standard Box” with respect to cantaloupes means standard container number 41, commonly known as Ajumbo cantaloupe crate®, or its equivalent, as defined in Sections 1404.5 and 1404.8 of the California Administrative Code, and such Astandard box® shall be considered to have a net weight of eighty (80) pounds. With respect to melons other than cantaloupes, Astandard box® means standard fiberboard container number 44K, or its equivalent, as defined in Sections 1441.5 and 1441.7 of the California Administrative Code, and such Astandard box® shall be considered to have a net weight of thirty (30) pounds.
9. “Sell” means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade melons.
10. “Ship” means to transport melons or cause them to be transported by any means whatsoever.
11. “Market”, unless the context indicates otherwise, shall be synonymous with the phrase Ato market® and shall mean to sell, ship, distribute or otherwise handle.
12. “Processor” means any person engaged within this State in the operation of receiving, grading, packing into an authorized container or other activity performed for the purpose of preparing melons for market or of marketing melons in fresh or processed form in a quantity of 5,000 standard boxes or more or their equivalent during a marketing season.

13. “Handler” means any person engaged within this State as a distributor of melons or as a processor of melons in a quantity of 5,000 standard boxes or more or their equivalent during a marketing season, who first receives or obtains such melons from producers thereof and shall include any producer of melons who performs any of the functions of a distributor or of a processor.

14. “Fiscal Period” or “Marketing Season” means the calendar year.

A R T I C L E I I

MELON RESEARCH BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. A Board to be known as the Melon Research Board is hereby established and shall consist of nine (9) members to assist the Department in the administration of this Program. The Board shall be composed of producers and handlers as herein defined.

2. There shall be an alternate member for each member of the Board. The alternate shall be selected in the same manner and for the same term as the member.

3. Members and alternate members shall be appointed by the Department from nominations received for that purpose.

4. Producer membership on the Board shall be by districts as follows:

District A. Southern California District consists of the counties of Imperial, San Diego, Orange, Riverside, Los Angeles, San Bernardino, Ventura, and Santa Barbara.

District B. Kern-Huron District consists of the counties of Kern, San Luis Obispo, Kings, Tulare, Inyo, and the area in Fresno County south of Mt. Whitney Road and its extensions.

District C. Mendota-Firebaugh District consists of the counties of Monterey, San Benito, the remainder of Fresno County, Madera, and Mono.

District D. Los Banos-Northern California District consists of the counties of Santa Cruz, Santa Clara, Merced, Mariposa, and all counties to the north thereof.

5. Each district shall be represented by one (1) producer member and one (1) alternate producer member, with the exception of District A, which shall be represented by two (2) producer members and two (2) alternate producer members; provided, that in the event of changes in areas of production, the Board may recommend and the Department may approve changes in district boundaries or changes in the number of members and alternate members from each district and any such reapportionment shall be deemed a minor amendment to this Program. (Amended 4/16/86)

6. Five (5) members and their alternates shall represent processors, producer-handlers, and handlers and shall be selected without regard to districts.

7. The term of office of the members and their respective alternates shall be for three (3) years beginning January 1 and continuing at the pleasure of the Department through December 31 of the third following year or until their successors have been appointed and have qualified, except that the members and their respective alternates of the initial Board shall serve from the time of their appointment and continue through December 31, 1973, or until their successors have been appointed and have qualified. (Amended 1/31/97)

8. Notwithstanding other provisions of this Article II, and upon recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public, in addition to the nine (9) members of the Board provided for in this Section A. Such persons shall not be affiliated in any way with respect to the production or marketing of melons and shall have all of the rights and privileges, including voting, of any other member or alternate member of the Board. The regular term of office of any member or respective alternate member appointed pursuant to this Subsection & shall be as close as possible to three (3) full years and shall terminate on December 31 of each odd-numbered year. (Amended 1/31/97)

Section B. NOMINATION OF MEMBERS OF MELON RESEARCH BOARD.

1. Nominations for the initial Melon Research Board shall be made at the public hearing held for the purpose of formulating this Program.

2. For the purpose of obtaining nominations to subsequent Boards, the Department shall cause to be held a meeting or meetings of producers in each district in California described in Subsection 5, Section A of this Article. The Department shall also cause to be held a meeting or meetings of handlers without regard to districts. Such nomination meetings shall be held biennially not later than December 1.

3. Insofar as practicable, producers, processors, producer handlers, and handlers shall nominate not less than three (3) persons eligible to serve as a member of the Research Board for each member position available.

4. The Board may recommend nomination procedures applicable to Board subsequent to the initial Board.

Section C. SELECTION AND APPOINTMENT OF MEMBERS OF RESEARCH BOARD.

In appointing the members and alternates of the Board, the Department shall select nine (9) members and nine (9) alternates members from the nominees selected by producers and handlers. Such appointments shall be consistent with the provisions of Sections A and B hereof. Insofar as practicable, the Department shall include in its selection representatives for all varieties of melons.

Section D. FAILURE TO NOMINATE. In the event nominations are not made pursuant to Sections A and B of Article II and within the time specified therein, the Department may select members and alternate members, without regard to nominations, from the individuals who are or who represent members of groups entitled to submit nominations as described in said Section A of Article II.

Section E. QUALIFICATION. Any person appointed by the Department as a member or as an alternate for a member of the Board shall qualify by filing with the Department a written acceptance and such other documents as may be required.

Section F. ALTERNATE MEMBERS. An alternate member of the Board shall, in the absence of the member for whom he/she is alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meetings. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate

shall act in his/her place and stead until a successor to such member is selected and has qualified.

Section G. VACANCIES AND DISQUALIFICATION.

1. The Department shall fill any vacancy occasioned by the removal, death, resignation or disqualification of any member or alternate member of the Melon Board. In making such selection, the Department may take into consideration any nominations made by the remaining members of the Board.

2. Any producer member or alternate who ceases producing melons in the district from which he/she was selected and any other member or alternate who ceases to be directly associated with melon handling, processing, or producing shall be disqualified and his/her position shall be deemed vacant at the next succeeding meeting of the Board following such member's or alternate's disqualification.

Section H. ORGANIZATION.

1. The Melon Board shall not perform any of its duties nor exercise any of the powers herein granted when more than four (4) vacancies in its membership or alternate membership exist.

2. Six (6) members of the Board or their voting alternates shall constitute a quorum. Any recommendation of the Board to the Department shall require an affirmative vote of not less than six (6) voting members.

Section I. COMMITTEES. The Board may recommend and the Department may appoint, such committees as may be deemed necessary to assist the Board and the Department in performing duties authorized pursuant to this Program.

Section J. EXPENSES. The members of the Board, including any committees provided for hereinabove, may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder, but no such member shall receive a salary in the performance of such duties.

Section K. DUTIES AND POWERS OF THE BOARD. The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this program.
2. To recommend to the Department administrative rules and regulations relating to this Program.
3. To receive and report to the Department complaints of violations of this Program.
4. To recommend to the Department amendments to this Program.
5. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration.
6. To assist the Department in the collection of such necessary information and data as the Department or the Board may deem necessary to the proper administration of this Program and of the Act.
7. To keep minutes, books, and records which will clearly reflect all of its meetings, acts, and transactions and to provide the Department with copies of the minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall at all times be subject to examination by the Department or its duly authorized representatives.

8. To employ such personnel as may be deemed necessary and to fix their compensation and terms of employment.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE BOARD. The members of the Board, or any committees hereunder duly appointed by the Department, and the employees of such Board, shall not be held responsible individually in any way whatsoever to any producer or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonestly or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the Board, committee, or employee. The liability of the Board, its committees, or employees shall be several and not joint and no member shall be liable for the default of any other member.

ARTICLE III

GENERAL RESEARCH

Section A. RESEARCH AND DEVELOPMENT AND SURVEY STUDIES. The Board is authorized to undertake, or cause to be conducted and to administer, research, development and survey programs with respect to varietal development, production, harvesting, and transportation from field to processing points on any or all varieties of melons; provided, that such research may include research to determine the carrying quality of new varieties of melons and improved strains of existing varieties of melons. With the approval of the Department, the Board may expend money, enter into contracts with qualified research agencies and do all things necessary and proper in the conduct of a melon research and development and survey program limited by the provisions of Section 58892 of the Act.

ARTICLE IV

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATIONS OF BUDGETS AND RATES OF ASSESSMENT BY THE BOARD. At the beginning of each fiscal year hereunder and as may be necessary thereafter, the Board shall recommend to the Department a budget or budgets of estimated income, expenditures, and reserves for the administration and enforcement of this Program and the activities authorized hereunder. The Board shall also recommend a rate or rates of assessment calculated to provide adequate funds to defray the proposed expenditures and reserves as set forth in said budget or budgets; provided, however, that the rate of assessment shall not exceed two cents (\$0.02) per hundredweight of melons or the equivalent thereof on handlers; provided, further, that, during the 1972 season, the rate of assessment shall not exceed one cent (\$0.01) per hundredweight of melons or the equivalent thereof on producers and shall not exceed one cent (\$0.01) per hundredweight thereof of melons or the equivalent thereof on handlers. The rate or rates of assessment need not be the same for all varieties or kinds or utilizations of melons but shall be based upon the needs of the Program and the benefits attributable to the variety or kind or utilization of melon concerned. The Board shall recommend the assessment rates to be imposed upon producers and handlers and such assessments need not be equal.

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT BY THE DIRECTOR. If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, he/she may approve such budgets and rates; provided, however, that in no

event shall such rates of assessment exceed the maximum rates authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS. The obligation to pay assessments under this Program shall apply to each producer and handler for all melons marketed by said handler. To facilitate collection, each handler of melons shall pay the applicable assessment on all melons received by him from a producer at the rates approved by the Department pursuant to the provisions of the Program. The handler may, however, deduct any assessment paid for and on behalf of a producer from any money owed by handler to the producer. The Department shall verify that proper payment has been made by handlers for and behalf of producers. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department upon demand. In any event of failure by any person to pay any assessment payable hereunder, the Department may file a complaint against such a person in a State court of competent jurisdiction for the collection hereof pursuant to the provisions of Section 58929 of the Act. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment.

Section D. REFUNDS. Any money collected as assessments during a marketing season and not expended in connection with this Program may, at the discretion of the Department, be refunded after the close of any marketing season upon a pro rata basis to all persons from whom assessments were collected; or all or a portion of such money as may be recommended by the Board and approved by the Department may be carried over into the next marketing season if the Department finds that such money may be required in defraying the costs of this Program in such succeeding season.

ARTICLE V

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS. Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representative, such information as may be, from time to time, requested by them relating to operations under this Program and shall permit the inspection of said Department, or its duly authorized or designated representative, of such portion of their books and records as relate to operations under said Program.

Section B. CONFIDENTIAL INFORMATION. Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Department or the Advisory Board to give legal advice thereupon or by court order.

Section C. IMMUNITY. No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he/she may be so required to testify, or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by the Department.

ARTICLE VI

APPEALS

Section A. APPEALS. Any person affected by this Melon Research Program may petition the Department to review any order or decision of the Board or any of its subcommittees. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL. Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of said Board, unless the Department shall rule otherwise. The Department, shall, if the facts stated show reasonable grounds, grant any order or decision upon which an appeal is taken.

ARTICLE VII

AGENTS

Section A. AGENTS. The Department may, by designation in writing, name any person or persons, including officers or employees of the California Department of Agriculture, to act as its agent or agents, with respect to any provision of this Melon Research Program.

ARTICLE VIII

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS. In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (Sections 16700 et seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

ARTICLE IX

SEPARABILITY

Section A. SEPARABILITY. If any section, sentence, clause, or part of this Program is for any reason held to be invalid or unconstitutional, or the applicability thereof to any person, circumstance, or thing is held to be invalid or unconstitutional, such decision shall not affect the remaining portions of this Program. The Department and the signatories to the assents to this Program hereby declare that the Department would have issued this Program and each sentence, section, clause, or part thereof, and each of the signatories to the assents would have assented to each sentence, section, clause, or part thereof, despite the fact that one or more sections, sentences, clauses, or parts thereof be declared invalid or unconstitutional.

ARTICLE X

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME. This Program shall be come effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department or by operation of law in accordance with the provisions of the Act. (Amended June 16, 1986.)

Section B. TERMINATION. Pursuant to the provisions of Section 59081 of the Agricultural Code, the Department shall suspend or terminate this Program, or any provision thereof, whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter 1, Division 21 of said Agricultural Code, that this Program, or any provisions thereof, is contrary to or does not tend to effectuate the declared purposes or provisions of the Act within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provision or terminate this Program in accordance with the provisions of Sections 59082, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT. Unless otherwise expressly provided for in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of the Program issued by the Department shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which have arisen or may thereafter arise in connection with any other provisions of said Program, not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or of any person with respect to any such violation; or (d) affect any liabilities pursuant to the provisions of this Program.